IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.Rev.Pet.No. 3224 of 2006(C)

REVN. PETITIONER:

JOSE, S/O.POULOSE,
VAZHAPPILLY HOUSE, PUTHUR KAIPARAMBU POST,
TRICHUR DIST.

BY ADV. SRI.T.M.CHANDRAN

RESPONDENTS:

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1. REVENUE DIVISIONAL OFFICER,
TRICHUR.

2. JOHNSON, S/O.LAZAR,
VAZHAPPILLY HOUSE, PUTHUR KAIPARAMBU POST,
TRICHUR DISTRICT.

3. VARGHESE, S/O.KUNHUVAREED,
CHITTALAPPILLY HOUSE, PUTHUR,
KAIPARAMBU POST, TRICHUR DIST.

4. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 3224 OF 2006 C

Dated this the 4th day of July, 2007

O R D E R

In this revision filed under section 397 read with section 401 Cr.P.C. the revision petitioner challenges the order dated 14.8.2006 (styled as a notice) passed by the 1st respondent Revenue Divisional Officer/Executive Magistrate, Thrissur, directing the revision petitioner to discontinue the piggery conducted by him in his property situated in Kaiparambu Grama Panchayat without a licence and in a manner causing public nuisance to the residents of that locality.

2. As per a mass petition signed by respondents 2 and 3 and others the Sub Divisional Magistrate, Thrissur was moved on 9.5.2006 alleging that the revision petitioner herein and others were rearing more than 100 porks and pigs in their property in an unhygienic and unscientific manner causing a nuisance to the public and the residents of that area. The said mass petition was made over to the Revenue Divisional Officer/Executive Magistrate, who as per Annexure-II order dated 7.7.06 (also styled as a notice) called upon the revision petitioner and others to appear before him at 11 a.m. on 19.7.2006 for a hearing. The revision petitioner appeared and after taking time filed Annexure-III objections dated 23.8.2006 denying the allegations and objecting to the

proposed action. In the meanwhile, on 19.8.2006 the Tahsildar, Thrissur to whom a copy of the mass petition had been marked for report submitted a report before the Revenue Divisional Officer stating that the allegations in the mass petition were well founded. Thereupon, the first respondent Revenue Divisional Officer passed the impugned order prohibiting the revision petitioner from conducting the piggery forthwith. It is the said order which is assailed in this revision.

3. The learned counsel for respondents 2 and 3 raised a preliminary objection that the impugned order not being a final order but only a conditional order passed under section 133(1)(b) Cr.P.C. is not revisable under section 397 Cr.P.C.

4. I am not inclined to accept the above objection regarding the maintainability of the revision. The impugned order is not a conditional order the power to pass which could be located under section 133(1)(b)(ii) Cr.P.C. It virtually partakes the character of a final order and hence this revision is perfectly maintainable.

5. A perusal of Annexure-II order dated 7.7.2006 as well as the impugned order dated 14.8.2006 do not show the provision of law under which those orders have been passed. Going by the nature of allegations in the mass petition, what is decidable is that the complaint was one falling under 133(1)(b) Cr.P.C. alleging a public nuisance on account of the rearing of pigs/porks by the revision petitioner and others.

If so, the order which the Executive Magistrate ought to have passed should have been one falling under Clause (ii) of Section 133(1) Cr.P.C. and giving an opportunity to the opposite party to appear before the Magistrate and show cause why the conditional order should not be made absolute in case he objected to the said order. A reading of Annexure-2 order does not indicate that the said order was passed in conformity with the above legal provision. All that it shows is that the opposite party is called for a hearing with reference to the complaint by the residents of Kaiparambu Panchayat regarding the environmental pollution. That is not the form in which a conditional order under section 133(1)(b)(ii) Cr.P.C. should be worded or passed. The conditional order of that nature should be one to desist from carrying on the trade or to remove the trade or a regulation of the trade in such manner as may be directed in the order and asking the opposite party to show cause as to why the said conditional order should not be made absolute in case he is objecting to the conditional order. Thereafter, the person to whom the order is addressed is to appear and show cause against the conditional order in case he is objecting to the same. Where such person after appearance before the Magistrate shows cause and objects to the conditional order the Magistrate is to conduct an enquiry under section 137 Cr.P.C. During such enquiry, the Magistrate is to call upon the complainant to lead evidence in support of the alleged public nuisance.

The Magistrate is also given the power to direct local investigation or examination by an expert. In the present case, apart from the fact that Annexure-II order as well as the impugned order do not conform to the requirement of law, the impugned order is one virtually partaking the character of a final order passed without any enquiry and without taking evidence under section 137 Cr.P.C. Both Annexure-II order as well as the impugned order dated 14.8.2006 cannot, therefore, be supported. Since the revision is directed only against impugned order dated 14.8.2006 the same is set aside and the first respondent is directed to proceed afresh under Chapter X Part B Cr.P.C. strictly in accordance with law. Since there was a stay of the impugned order passed by this court, it is not disputed that the piggery run by the petitioner is still functioning. The first respondent shall after hearing both sides pass final orders under section 138 Cr.P.C. either directing discontinuance of the piggery or continuance of the same subject to such conditions as he may deem fit safeguarding the health of the residents and ensuring that the piggery does not cause any public nuisance in that locality. But such final orders shall be passed only after taking evidence and strictly in accordance with law. Final orders shall be passed by the first respondent within six months from the date of receipt of a copy of this order. Until then, the revision petitioner will be entitled to maintain the piggery without giving room for any complaint of public nuisance and

ensuring that the same does not emanate any objectionable stink or other nuisance to the local residents. It is made clear that the continuance of the piggery will be subject to final orders to be passed as above. It shall also be lawful for the Magistrate to pass appropriate prohibitory orders under section 142 Cr.P.C. if such a course is warranted but only after hearing both sides.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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